



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Collision Specialist and Sales, Inc.

Case No. TR-99-0021

FINAL DECISION

On July 27, 1999, Jodie M. Ziegenhagen filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Collision Specialist and Sales, Inc. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals.

By letter dated October 21, 1999, the Administrative Law Judge (ALJ) advised the parties that he would issue a preliminary determination in this matter without a hearing. The parties were given until November 5, 1999, to file any additional documents or information that they wished to have the ALJ consider in issuing the preliminary determination. The Dealer filed a letter objecting to the claim on November 1, 1999. The Administrative Law Judge issued a Preliminary Determination on December 16, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Jodie M. Ziegenhagen
4512 County Rd. E
Oshkosh, WI 54904

Collision Specialist and Sales, Inc.
5095 State Hwy. 21
Oshkosh, WI 54904

Old Republic Surety
P. O. Box 941
Brookfield, WI 53008-0941

FINDINGS OF FACT

1. Collision Specialist and Sales, Inc. (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. The Dealer's facilities are located at 5095 State Highway 21, Oshkosh, Wisconsin.

2. The Dealer has had a surety bond in place from February 1, 1996, to the present. (Bond #6041005400028 from Hartford Fire Insurance Company from 2-1-96 to 3-8-98, and Bond #MSA1156276 from Old Republic Surety Company from 3-8-98 to the present date.)

3. On November 30, 1998, Jodie M. Ziegenhagen purchased a 1992 Pontiac Grand Am, vehicle identification number 1G2NES4NONC203345, from the Dealer. According to the purchase contract, Ms. Ziegenhagen paid \$4791.00, including tax and registration fees, for the vehicle. Pursuant to the purchase contract the Dealer also provided a one month or 3000 mile warranty and a service contract for the same period. According to the purchase contract, Ms. Ziegenhagen was responsible for fifty percent of the cost of any work performed under the service contract.

4. On June 11, 1998 the vehicle was inspected by a state authorized inspector and all inspected components were checked "OK." The Wisconsin Buyers Guide for the vehicle prepared by the Dealer and posted in the window at the time Ms. Ziegenhagen purchased the vehicle disclosed that the vehicle was "rebuilt salvage." The Wisconsin Buyers Guide further disclosed that no problems with any of the inspected components existed and that all the vehicle equipment inspected was legal.

5. After accepting delivery of the vehicle, Ms. Ziegenhagen noticed several problems with the vehicle. She took the vehicle back to the Dealer. She was not satisfied with the Dealer's response to her complaints and on December 2, 1998, her father, Dan Ziegenhagen, stopped payment on the check he had given to the Dealer for the purchase of the vehicle. Mr. Ziegenhagen indicated he would issue another check when the vehicle was fixed to the Ziegenhagens' satisfaction.

6. The Dealer commenced a small claims action to recover the purchase price of the vehicle. The Dealer received a judgment against Jodie and Dan Ziegenhagen from the Winnebago County Circuit Court – Small Claims Division.

7. On January 11, 1999, Jodie M. Ziegenhagen filed a complaint against the Dealer with the Department of Transportation (Department). The complaint included the following list of ten problems with the vehicle:

- a. There was a vibration and grinding noise in the front end when [Ms. Ziegenhagen] accelerated. It seemed to be coming from the drive train.
- b. Idles improperly.
- c. Interior light didn't work properly.

- d. Shifter light didn't work at all.
- e. There was no spare tire.
- f. Trunk latch didn't work.
- g. Exhaust leak which the mechanic mentioned might be the noise when [Ms. Ziegenhagen] brought the car back on Tuesday, December 1, 1998.
- h. Horn didn't work.
- i. Windshield washer didn't work.
- j. Fog light was missing.

8. Steven Reid, a senior investigator for the Department's Dealer Section, investigated the complaint. As a result of his investigation, Investigator Reid concluded that the Dealer apparently violated two administrative rules in this transaction. One violation was a failure to put the warranty referred to in the purchase contract in writing and to include required items in violation of sec. Trans 139.06(1), Wis. Adm. Code. The second apparent violation was a failure to disclose an "abnormal noise/vibration" in violation of sec. Trans 139.04(4), Wis. Adm. Code. At the conclusion of Investigator Reid's investigation, the Dealer agreed to repair the vehicle.

9. On March 1, 1999, Ms. Ziegenhagen took the vehicle to a General Motors dealer (Bergstrom) for diagnosis. Bergstrom reported the following diagnoses to Ms. Ziegenhagen's complaints:

Complaint	Diagnosis
Vibration on acceleration	Is not normal condition possibly[y] caused by weak motor mounts causing engine to move too far and vibrate against stops cannot determine exact cause without parts replacement
Pulls hard to right on all roads and conditions, vibration in front end at 55 MPH	Front tires out of balance
Engine exhaust and leak	Needs exhaust manifold to pipe seal
Transmission oil leak	Needs right front output shaft seal

10. The Dealer filed a copy of a work order indicating that on April 5, 1999, he replaced the upper motor mount, cleaned the intake plenum and changed the p.c.v. valve. The Dealer also indicates that he checked for a transmission seal leak and did not find one. The oil filter is above the transmission seal and the Dealer surmised that that the transmissions seal leak reported was actually engine oil which ran down when the oil filter was changed. The Dealer wrote "fixed" next to engine exhaust entry on a copy of the March 1, 1999, report from Bergstrom; however, the April 5, 1999, repair order does not indicate any work done on the exhaust system.

11. On June 28, 1999, Ms. Ziegenhagen took the vehicle back to Bergstrom for additional diagnosis. In the report prepared after their diagnosis, Bergstrom reported the following diagnoses to Ms. Ziegenhagen's complaints:

Complaint	Diagnosis
Customer states air conditioning blowing warm air	Install gauges and checked system, found no R134 freon in system, would need to add one pound of freon and dye to diagnose where system is leaking.
Customer states vibration in front end on acceleration from a stop	Perform bulletin search, vehicle will need the flywheel and vibration dampner replaced
Customer states speedometer inoperable at times	Advise could not duplicate customer concern at this time, speedometer is working okay
Customer states exhaust leak in engine area	Crossover pipe leaking at joint would need to replace crossover pipe due to leak
Customer states transmission fluid leaking from underneath vehicle	Right output shaft seal at transmission leaking
Customer states idle jumps up and down	Found bulletin pertaining to problem, calls for replacing air control module – road tested vehicle, idle jumps only in park and neutral, okay in drive
Customer states both fog lights are inoperable	Wiring to fog lamps spliced, checked voltage to fog lamps, 0 volts and wires are spliced improperly
Customer states driver's power lock switch inoperable	Checked power to switch – okay, needs to have switch replaced
Customer states vehicle pulls to right	Vehicle out of alignment, needs alignment and rotation of tires

12. On July 27, 1999, Ms. Ziegenhagen filed a claim against the Dealer's bond with the Department. The amount of the claim is \$1883.68 and as support for the claim Ms. Ziegenhagen sent copies of the June 28th estimate from Bergstrom, the March 1st estimate from Bergstrom, and a copy of a receipt from Bergstrom for a bracket. The total estimate of the cost of the repairs on the June 28th diagnostic report from Bergstrom is \$1625.03. Bergstrom charged Ms. Ziegenhagen for its labor to diagnosis her complaints a total of \$242.03 (\$179.03 for the June 28th diagnosis and \$63.00 for the March 1st diagnosis). The invoice for the bracket was \$16.62.

13. Sec. 139.04(4), Wis. Adm. Code, requires a motor vehicle dealer to disclose "all significant existing mechanical, electrical and electronic defects and damage and evidence of repair to strut tower, trunk floor [pan], frame or structural portion of unibody, including corrective welds. Disclosure of information shall be that which the licensee can find using reasonable care." On the Wisconsin Buyers Guide, the Dealer disclosed no problems or defects with the vehicle. Based on the documentation provided, it is not clear whether any of the problems reported by Ms. Ziegenhagen were significant enough to require disclosure on the Wisconsin Buyers Guide and/or could have been discovered during a reasonable inspection. (Because the Dealer apparently rebuilt this vehicle after an accident, presumably the Dealer would have been more knowledgeable regarding its condition than a typical dealer which merely conducted a presale inspection.) Regardless of whether any of the alleged defects should have been disclosed by the Dealer, the Dealer provided to Ms. Ziegenhagen a one month/3000 mile warranty on the vehicle to Ms. Ziegenhagen. Therefore, these problems could be considered warranty claims, not disclosure violations.

14. The complaint Ms. Ziegenhagen filed with the Department on January 11, 1999, was filed shortly after the thirty-day warranty expired. For purposes of this decision, it will be assumed that the problems listed in this complaint were reported to the Dealer within the warranty period. Ms. Ziegenhagen is entitled to reimbursement for the cost to repair any problems reported in the January 11, 1999 dealer complaint which were still present at the time she took the vehicle to Bergstrom in June for a diagnosis. Any problems which were listed in the January 11, 1999 complaint and are not mentioned in the June 28th diagnosis report will be assumed to have been repaired by the Dealer.

15. Referring to the complaints listed in paragraph eleven above, the first complaint listed is a problem with the vehicle's air conditioning. No problem with the air conditioning was previously reported by Ms. Ziegenhagen. This portion of the claim is not allowable.

The second complaint listed is front end vibration on acceleration from a stop. The diagnosis to resolve this problem is to replace the flywheel and vibration. Although Ms. Ziegenhagen reported vibration in her January 11, 1999 complaint, the cause of this vibration was diagnosed by Bergstrom in March as weak motor mounts. The Dealer indicates it did replace the upper motor mount, cleaned the intake plenum, and changed the p.c.v. valve in April, 1999. After this work, the Dealer reported the engine vibration was greatly reduced. It is not clear whether the vibration diagnosed by Bergstrom in June is the same or a different vibration problem than initially reported. It is also not clear from the documentation filed whether the

vibration diagnosed in June was significant. Based on the documentation in the record this portion of the claim is not allowable.

The third complaint on Bergstrom's June diagnostic report is that the shifter light was inoperable. This problem was included in Ms. Ziegenhagen's January 11, 1999 complaint. Bergstrom's diagnosis is that the module installed is either wrong or inoperable. The cost for a new module for a 1992-93 model Pontiac Grand Am is \$58.08. An inoperable shifter light is a minor problem and the failure to disclose an inoperable shifter light would probably not be considered a failure of the Dealer's responsibility to disclose significant mechanical, electrical or electronic defects pursuant to sec. Trans 139.04(4), Wis. Adm. Code. However, since the Dealer failed to set forth the terms of the warranty provided to Ms. Ziegenhagen, any limitation on the items covered by the warranty are unknown. It must be assumed that the shifter light is covered by the warranty. The \$58.08 cost to replace the shifter light module is an allowable claim.

The fourth complaint is an inoperable speedometer. Bergstrom reported the speedometer was working when it had the vehicle for diagnosis so it is not clear that a problem with the speedometer exists. Regardless, an inoperable speedometer problem was not one of the problems reported by Ms. Ziegenhagen in her January 11, 1999 complaint and is not allowable.

The fifth complaint is an exhaust leak. Bergstrom reported the crossover pipe was leaking. Ms. Ziegenhagen listed an exhaust leak in her January 11, 1999 complaint. However, in March, 1999, diagnosed that the vehicle needed an "exhaust manifold to pipe seal." The Dealer indicates that this leak was fixed. It appears that the exhaust leak existing in June, 1999 is a different leak than reported in January, 1999. This portion of the claim is not allowable.

The sixth complaint is a transmission fluid leak. This problem was reported in Ms. Ziegenhagen's January 11, 1999 complaint. The Dealer dismisses this complaint as engine oil dripping after the oil filter is changed. However, Bergstrom diagnosed this problem as a "right output shaft seal at transmission leaking." It appears that Bergstrom found a leak that the Dealer did not detect. The \$132.00 estimate (twelve dollars for parts and \$120.00 labor) to repair this leak is allowable.

The seventh complaint is that the idle jumps up and down. Although Ms. Ziegenhagen's January 11, 1999 complaint includes on the list of problems that the vehicle "idles improperly", the Dealer indicates that this problem was fixed. The March, 1999 diagnosis from Bergstrom does not list any idling problems. Based on the documentation in the file, it appears that the idling problem diagnosed in June, 1999 is not the same idling problem listed on the January 11, 1999 complaint. This claim is not allowable.

The eighth complaint is that both fog lights are inoperable. Ms. Ziegenhagen's January 11, 1999 complaint indicates that a fog light was missing. The March, 1999 diagnosis from Bergstrom does not list any problems with the fog lights. Apparently, the Dealer did replace the missing fog light and the fog lights then became inoperable sometime between March and June, 1999. Bergstrom's June, 1999 diagnosis indicates the problem with the fog lights is that the wires are improperly spliced, but does not provide an estimate of the repair costs. Based on the documentation in the file, the most logical explanation is that the Dealer replaced the missing fog

light but improperly spliced the wires when installing it. If this is what occurred, the Dealer would be responsible for the cost of repairing the fog lighter; however, there is no cost estimate for the repair and; therefore, no basis to award a claim for this problem.

The ninth complaint is that the driver's power lock switch is inoperable. This problem was not listed on Ms. Ziegenhagen's January 11, 1999 complaint and is, therefore, not allowable.

The tenth complaint is that the vehicle pulls to the right. This problem was not listed in the January 11, 1999 complaint. Additionally, the Dealer indicates that the vehicle was aligned before Ms. Ziegenhagen left the shop. The March, 1999 diagnosis also indicated that the vehicle pulled to the right. The cause of this problem was determined to be that the front tires were out of balance. The Dealer indicates that this problem was fixed. Tire rotation and front end alignment are items of normal maintenance and are not typically covered by warranties. This portion of the claim is not allowable.

Finally, as part of her claim Ms. Ziegenhagen sent a copy of an invoice for a bracket. Presumably the bracket was purchased for the vehicle purchased from the Dealer; however, there is no indication that it was related to any of the problems reported to the Dealer. This portion of the claim is not allowable.

16. The failure of the Dealer to set forth the terms of the warranty provided to Ms. Ziegenhagen in writing in a form that complies with the requirements of sec. Trans 139.06, Wis. Adm. Code, constitutes a violation of sec. 218.01(3)(a) 4 and/or 14, Stats. A violation of either sec. 218.01(3)(a) 4 or 14, Stats., constitutes grounds for the suspension or revocation of the Dealer's motor vehicle dealer license.

17. A portion of the loss sustained by Jodie Ziegenhagen was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, \$190.08 of her claim is allowable.

18. Jodie Ziegenhagen's claim arose on November 30, 1998, the day she purchased the vehicle from the Dealer. The surety bond issued by Old Republic Surety Company was in effect on that date.

19. The bond claim was filed within three years of the ending date of the period the Old Republic Surety Company bond was in effect and is; therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Sec. Trans 140.21(1), Wis. Adm. Code provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the claimant's agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Ms. Ziegenhagen's claim, a finding must be made that Collision Specialist and Sales, Inc., violated one of the sections of sec. 218.01(3)(c), Stats., listed in sec. Trans 140.21(1)(c)1, Wis. Adm. Code, and that the violation caused the loss sustained by Ms. Ziegenhagen.

In his report, Investigator Reid concluded that the Dealer had violated two provisions of Ch. Trans 139, Wis. Adm. Code. The first alleged violation was a violation of sec. Trans 139.04(4), Wis. Adm. Code. This alleged violation is that the Dealer failed to disclose and "abnormal noise/vibration." The Dealer disputes that there was any abnormal engine noise or vibration present when the vehicle was sold to Ms. Ziegenhagen. Regardless, the Dealer did provide to Ms. Ziegenhagen a one month/3000 mile warranty with the vehicle. This problem was reported to the Dealer by Ms. Ziegenhagen within the warranty period and repaired by the Dealer. Accordingly, even if the Dealer did fail to disclose a defect which should have been discovered during the presale inspection, the Dealer did repair the defect at no expense to Ms. Ziegenhagen. Therefore, Ms. Ziegenhagen did not sustain any loss as a result of this alleged disclosure violation.

The second alleged violation is that the Dealer failed to set forth the terms and conditions of the warranty provided to Ms. Ziegenhagen in a form that complies with the provisions of sec. 139.06(1), Wis. Adm. Code. Although no written warranty other than the indication in the purchase contract existed, the Dealer did attempt to repair most of the defects that Ms. Ziegenhagen reported to him during the warranty period. The vehicle which is the subject of this claim was a rebuilt salvage vehicle. Ms. Ziegenhagen presumably purchased this vehicle partially relying on the existence of a warranty to cover the cost of any defects which were discovered after the purchase of the vehicle. The Dealer's failure to put the terms and conditions of the warranty in writing in a form that would satisfy the requirements of sec. 139.06(1), Wis. Adm. Code, has left Ms. Ziegenhagen with an unenforceable warranty.

Despite the lack of a written warranty, the Dealer did attempt to repair most of the defects reported by Ms. Ziegenhagen; however, two defects, the inoperable shifter light and the transmission fluid seal leak, were reported to the Dealer within the warranty period and not repaired by the Dealer. The cost of repairing these two defects, \$190.08, is a loss sustained by Ms. Ziegenhagen as a result of the Dealer's violation of sec. 139.06(1), Wis. Adm. Code. This portion of the claim is allowable.

In the letter filed by the Dealer on November 1, 1999, the Dealer argues that the warranty was intended as a 50/50 warranty, the Dealer and Ms. Ziegenhagen would split the cost of repairs equally. A review of the purchase contract indicates that the service contract also provided by the Dealer has a fifty percent contribution requirement by the customer, but not the warranty. No limitations on the warranty are listed. This may not have been the intent of the parties, but the Dealer's failure to put the terms and limitations on the warranty into writing has to a large extent resulted in this bond claim. The benefit of the doubt on this issue must be given to Ms. Ziegenhagen. The allowable amount of the bond claim will be 100% of the estimate to repair the two reported defects.

CONCLUSIONS OF LAW

1. Jodie Ziegenhagen's claim arose on November 30, 1998, the date she purchased the subject vehicle from Collision Specialist and Sales, Inc. The surety bond issued to Collision Specialist and Sales, Inc., by Old Republic Surety was in effect at this time. The claim arose during the period covered by the surety bond.

2. Ms. Ziegenhagen filed a claim against the motor vehicle dealer bond of Collision Specialist and Sales, Inc., on July 27, 1999. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. A portion of the loss sustained by Ms. Ziegenhagen was caused by an act of Collision Specialist and Sales, Inc., which would be grounds for suspension or revocation of its motor vehicle dealer license; therefore, pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, this portion of the claim is allowable. The amount of the claim that is allowable is \$190.08.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Jodie Ziegenhagen against the motor vehicle dealer bond of Collision Specialist and Sales, Inc., APPROVED in the amount of \$190.08. Old Republic Surety Company shall pay Ms. Ziegenhagen this amount for her loss attributable to the actions of Collision Specialist and Sales, Inc.

Dated at Madison, Wisconsin on March 1, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.